

U.S. COURT
OF MASS.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

2004 JUN 16 A 5:47

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MICHAEL CAPUTO,

Petitioner,

Civil Action No. 04-10732-JLT
CLERK'S OFFICE

vs.

KENNETH NELSON,

Respondent.
-----X

ANSWER AND AFFIRMATIVE DEFENSES

Pursuant to Rule 5 of the Rules Governing Section 2254 Cases, the respondent, Kenneth Nelson, through counsel, answers the numbered paragraphs of the petition for writ of habeas corpus as follows:

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted.
6. Admitted.
7. Admitted.
8. Admitted.
9. Admitted.
10. Admitted.
11. Admitted.

12. With respect to the allegations of fact contained in paragraphs 12(A-C) of the petition, the respondent states that the state court record speaks for itself. The respondent denies each and every allegation of fact that does not comport exactly with the state court record of the petitioner's criminal proceedings or with the Massachusetts Supreme Judicial Court's recitation of the facts. To the extent that paragraph 12(A-C) of the petition for writ of habeas corpus contain conclusions of law, they require no response. Further answering, the respondent states that the petitioner has failed to state a claim upon which relief may be granted.

13. Left blank by the petitioner.

14. The respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 14 of the petition for writ of habeas corpus and calls upon the petitioner to prove same.

15. Admitted.

16. Admitted.

17. The respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 17 of the petition for writ of habeas corpus and calls upon the petitioner to prove same.

AS A FURTHER ANSWER to the petition for a writ of habeas corpus, the respondent files herewith a Supplemental Answer, which contains copies of the following documents:

1. Docket Sheet, *Commonwealth v. Michael P. Caputo*, Suffolk County Superior Court Criminal Actions No. 1989-082853-54;
2. Defendant's Motions to Suppress Evidence and Statements in *Commonwealth v. Michael P. Caputo*;

3. Memorandum of Decision on Defendant's Motions to Suppress Evidence and Statements in *Commonwealth v. Michael P. Caputo*,
4. Motion for a New Trial, *Commonwealth v. Michael P. Caputo*, Massachusetts Supreme Judicial Court No. 2002-06103 (Suffolk County Criminal Actions Nos. 082853-54);
5. Memorandum of Decision and Order on Defendant's Motion for a New Trial, *Commonwealth v. Michael P. Caputo*;
6. Brief and Record Appendix for the Defendant-Appellant, *Commonwealth v. Michael P. Caputo*, Massachusetts Supreme Judicial Court No. 2002-06103;
7. Brief for the Commonwealth, *Commonwealth v. Michael P. Caputo*, Massachusetts Supreme Judicial Court No. 2002-06103;
8. *Commonwealth v. Michael P. Caputo*, 439 Mass. 153 (2003).

AFFIRMATIVE DEFENSES

First Affirmative Defense


The petition fails to state a claim upon which relief may be granted.

Second Affirmative Defense

The petition's request for habeas relief based upon Fourth Amendment grounds is barred by the Supreme Court's holding in *Stone v. Powell*, 428 U.S. 465 (1976).

Respectfully submitted,


THOMAS F. REILLY,
ATTORNEY GENERAL


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Dated: June 15, 2004

CERTIFICATE OF SERVICE

I hereby certify that I have this 15th day of June, 2004, served a true and accurate copy of the foregoing pleading on counsel for the petitioner, Michael Caputo, by depositing a copy in the office repository for collection and delivery by first class mail, postage prepaid, to the petitioner's counsel at the following address: John J. Courtney, Esq., 90 Salem Street, Malden, Massachusetts, 02148.


Maura D. McLaughlin